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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/713,849	11/15/2000	Daniel Biederman	CISCP671	4811
26541	7590	01/10/2006	EXAMINER	
Cindy S. Kaplan P.O. BOX 2448 SARATOGA, CA 95070			MAIS, MARK A	
			ART UNIT	PAPER NUMBER
			2664	

DATE MAILED: 01/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/713,849

Applicant(s)

BIEDERMAN, DANIEL

Examiner

Mark A. Mais

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**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 19 December 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). July 9, 2001  
13. ☐ Other: \_\_\_\_\_.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments in the request for reconsideration filed December 19, 2005 have been fully considered but they are not persuasive. Claims 1-27 are rejected for the same reasons discussed in the Final Office Action, dated August 19, 2005. For purposes of Appeal, claims 1-27 are pending in this application.

## DETAILED ACTION

### *Information Disclosure Statement*

1. The information disclosure statement (IDS) submitted on July 9, 2001 was filed after the mailing date of the Application on July 5, 2001. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the examiner considered the information disclosure statement.

### *Response to Arguments*

2. Applicant's arguments in the request for reconsideration filed December 19, 2005 have been fully considered but they are not persuasive.

3. Applicant's representative states that, with respect to claims 1, 10, 11, 16, and 25-27, Lafe et al. does not disclose, teach, or suggest assigning a priority level *associated* with a delay tolerance to data and selecting the data for data compression responsive to the priority level *wherein the delay tolerance is associated with the delay tolerance of the data* [Applicant's Response dated December 19, 2005, page 8, lines 9-11].

4. First, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., Applicant effectively states that the delay tolerance is only associated with the delay tolerance of the data ) are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van*

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*Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Second, as shown for Applicant's claim 1, Lafe et al. discloses that the priority level *is associated* with the delay tolerance of the data **[priority levels and quality of service (QOS) are inherently tied to delay tolerances. Moreover, priority levels, QOS, and delay tolerances encompass packet urgency, packet importance, and bandwidth requirements with respect to packet forwarding. See, for example, Yong et al., USP 5,541,919, col. 3, lines 38-47.]**.

5. Applicant's representative further argues that, with respect to claims 1, 10, 11, 16, and 25-27, the Q rating of Lafe et al. does not correspond to a priority level *associated* with a delay tolerance to data and selecting data for data transmission responsive to the priority level, but, rather, is based solely on the desired quality of the uncompressed data **[Applicant's Response dated December 19, 2005, page 8, lines 19-22]**.

6. The examiner disagrees. As stated above, priority levels and QOS are inherently tied together especially with respect to delay tolerances. Furthermore, priority levels, QOS, and delay tolerances encompass packet urgency, packet importance, and bandwidth requirements with respect to packet forwarding. **[See, for example, Yong et al., USP 5,541,919, col. 3, lines 38-47]**.

7. Applicant's representative argues that, with respect to claims 1, 10, 11, 16, and 25-27, the claimed invention takes advantage of capacity increasing capabilities of data compression

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technology while protecting high priority traffic from adverse compression calculations (and, by extension, that Lafe et al. does not) [Applicant's Response dated December 19, 2005, page 8, lines 25-28].

8. Applicant's argument fails to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

9. With respect to claims 1, 10, 11, 16, and 25-27, Applicant's representative argues (a) that Lafe et al. is not concerned with how long the compression takes (compression time delay); and (b) that Lafe et al.'s "priority" level is solely based on a specific QOS measurement (quality of data reconstruction) [Applicant's Response dated December 19, 2005, page 9, lines 1-6].

10. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., both (a) *not* concerned with compression time delay and (b) priority level *not* based on a specific quality of data reconstruction) are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

11. With respect to claims 1, 10, 11, 16, and 25-27, Applicant's representative argues that Lafe et al. does not use QOS to select a compression method (but instead refers to quality level Q

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which relates only to the desired quality of reconstructed data as opposed to the QOS of data transmitted over the network) [**Applicant's Response dated December 19, page 9, lines 7-13**].

12. First, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., using a specific QOS measurement to select a compression method) are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Second, as shown for Applicant's claim 1, Lafe et al. discloses selecting data for data compression responsive to the priority level [**selectively assigns 'lossless' or 'lossy' methods for compression (col. 4, lines 17-20; see also col. 2, lines 8-19) based on a Q (quality) level, col. 7, lines 14-22 (fig. 5). A lossless (high priority, no loss) compression method is used for financial data and a lossy (lower priority, some loss tolerated) compression method is used for audio, col. 5, lines 28-42**].

13. With respect to claims 1, 10, 11, 16, and 25-27, Applicant's representative restates a portion of examiner's rejection of claim 1, specifically (as shown for Applicant's claim 1) that priority levels and quality of service are inherently tied to delay tolerances [**Applicant's Response dated December 19, 2005, page 9, lines 14-15**]. Applicant's representative effectively states that (a) priority is only tied to delay tolerance as it relates to which type of traffic passes through the network first [*see Id.*, lines 15-16]. Applicant's representative then argues that Applicant's invention is distinguished from Lafe et al. because the Q rating disclosed in Lafe et al. (b) is

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based on the desired quality of the decompressed data (and not on the delay of high/low priority traffic as it passes through the network) [*see Id.*, lines 18-20].

14. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies [i.e., (a) that priority is only tied to delay tolerance as it relates type of traffic passing through the network, or, in the alternative, (b) that it is *not* tied to the desired quality of the decompressed data] are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

15. With respect to claims 2 and 17, Applicant's representative argues that Lafe et al. does not disclose compressing data if the priority is below a threshold [**Applicant's Response dated December 19, 2005, page 10, lines 1-4**].

16. The examiner disagrees. As shown above for Applicant's claims 1 and 2, the data in Lafe et al. is compressed based on the Q level that is selected by the user, and thus, must necessarily compress data based on the user-selected threshold [col. 7, lines 26-33; *see also* selectively assigning 'lossless' or 'lossy' methods for compression (col. 4, lines 17-20); *see also* col. 2, lines 8-19, based on a Q (quality) level, col. 7, lines 14-22 (fig. 5)].



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17. With respect to claims 5, 18, and 20, Applicant's representative argues (a) that Lafe et al. does *not* teach determining a compression level based on network congestion; (b) that Lafe et al., in contrast to applicant's invention, selects compression methods based on a desired quality level of decompressed data (as compared to the original data); and that (c) Lafe et al. does not change the type of compression selected for the data [**Applicant's Response dated December 19, 2005, page 10, lines 5-14**].

18. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies [i.e., (a) determining priority based only on network congestion, or, in the alternative, (b) that it is *not* tied to the desired quality of the decompressed data (as compared to the original data)] are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In response to (c) above [Lafe et al. not changing the type of compression selected for the data], as shown in claims 1 and 5, Lafe et al. necessarily changes the type of compression selected for the data [**selectively assigns 'lossless' or 'lossy' methods for compression (col. 4, lines 17-20); see also col. 2, lines 8-19, based on a Q (quality) level, col. 7, lines 14-22 (fig. 5)**].

19. With respect to claims 7 and 22, Applicant's representative states that those claims are patentable for the same reasons discussed for claims 2 and 5 [**Applicant's Response dated December 19, 2005, page 10, lines 16-17**].

20. The examiner disagrees. As shown in Applicant's claims 7 and 22 in paragraph 15 above, Lafe et al. discloses setting a threshold priority level for compression eligibility based on network congestion [interpreted by examiner as the rate/speed of transfer of data (i.e., slower speed networks takes more time to transfer data, and, therefore, benefit from compression, col. 1, lines 51-57)]. Moreover, as shown above for Applicant's claims 1 and 7, the data in Lafe et al. is compressed based on the Q level that is selected by the user, and thus, must necessarily compress data based on the user-selected threshold [col. 7, lines 26-33; see also selectively assigning 'lossless' or 'lossy' methods for compression (col. 4, lines 17-20); see also col. 2, lines 8-19, based on a Q (quality) level, col. 7, lines 14-22 (fig. 5)].

### ***Conclusion***

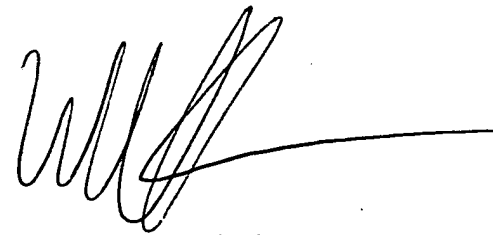
21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark A. Mais whose telephone number is (571) 272-3138. The examiner can normally be reached on 6:00-4:30.

22. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin can be reached on (571) 272-3134. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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23. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

December 27, 2005

A handwritten signature in black ink, consisting of stylized, overlapping loops and a long horizontal stroke extending to the right.

**WELLINGTON CHIN**  
**SENIOR PATENT EXAMINER**